

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9575 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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PAVANKUMAR R AGRAWAL

Versus

GUJARAT STATE COOPERATIVE TRIBUNAL

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Appearance:

MR PJ KANABAR for Petitioner

MR PV NANAVATI for Respondent No. 2

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 15/12/1999

ORAL JUDGEMENT

1. Rule. Mr.V.P. Nanavati, Ld. advocate for the Respondent No.2 waives service of rule. With the consent of Ld. advocate for the parties, matter is taken up for final hearing.

2. The challenge in this petition is the order dated 26-11-1999 recorded below Exhibit-4 in appeal No. 421 of

1999 by the Gujarat State Cooperative Tribunal, Ahmedabad, whereby the Tribunal vacated the stay which has granted initially, on the grounds stated therein.

3. The respondent no.2, that is Suprabhat Sahkari Bank Limited, filed a Lavad suit against Pushpa Textiles, their partners and the petitioner herein for recovery of an amount of Rs.2,53,693-12 along with interest. The Board of Nominee decreed the said suit as prayed for.

4. Aggrieved thereby petitioner herein who was respondent no.3 in the suit filed Appeal under section 102 of the Gujarat Cooperative Societies Act before the Tribunal. Along with the appeal petitioner also moved application Exhibit-4 inter alia praying relief of staying the judgment & decree till the pendency of the appeal. Initially the Tribunal granted stay and thereafter same was vacated.

5. Ld. advocate Mr. Kanabar urges that he has already deposited Rs.20,000/- in the bank itself in execution proceeding which is still pending and he is further prepared to deposit Rs.30,000/- in the bank, and on that condition if the stay granted earlier below exhibit-4, vacated subsequently, may be further granted till the hearing of the appeal, which is already fixed for hearing on 21-2-2000, same would meet the ends of justice. If the petitioner is not granted this indulgence then it is tant amount to adjudicating the matter without hearing the appeal filed by the petitioner. Petitioner is also facing execution proceedings filed by the Bank.

6. Ld. advocate Mr. V.P. Nanavati for respondent no.2 Bank states that the Bank has already filed execution proceedings which is pending and the appeal is filed against the money decree, therefore petitioner may be ordered to deposit the entire decretal amount, and on that condition the stay may be granted.

7. Having heard Ld. advocate appearing for the parties and having perusal of the judgment & decree, it is seen that the appeal is still pending and initially stay against impugned judgment & decree was granted and subsequently it has been vacated since the conditional order to deposit Rs.20,000/- has not been complied with. However the petitioner has subsequently complied the said condition. It may be noted that the petitioner is still prepared to deposit Rs.30,000-00. In view of this, if during pendency of the appeal, if the judgment & decree is stayed no prejudice would be caused to the parties.

Ld. advocate Mr. Nanavati states that except present petitioner other partners have not filed appeal, therefore the stay may be granted qua the present petitioner only on further depositing Rs.30,000-00 within a stipulated time.

8. In view of this, I am of the opinion that if during pendency of the appeal stay against the impugned judgment & decree qua the petitioner only is granted on condition the petitioner to deposit Rs.30,000-00 with the respondent no.2 Bank within a period of two weeks hereof, same would meet the ends of justice, and failing to deposit the amount within the stipulated period, the stay granted in favour of the petitioner shall stand automatically vacated.

9. In the net result present petition is allowed in part, and accordingly it is allowed partly with no order as to costs. Order recorded below exhibit-4 in Appeal No. 421/99 is stayed qua the petitioner only, on condition that the petitioner shall deposit Rs.30,000-00 with the Respondent No.2 Bank within a period of two weeks hereof, failing which stay shall stand vacated. Rule made absolute to the aforesaid extent.

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